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10/583,693	05/31/2007	Leslie Pape	BAC -127- A	3509

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EXAMINER
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ANDERSON, AMBER R

ART UNIT	PAPER NUMBER
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3765

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/583,693	<b>Applicant(s)</b> PAPE, LESLIE	
	<b>Examiner</b> AMBER R. ANDERSON	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 24-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's amendment filed May 26, 2009 has been reviewed and considered. The amendments to the claims have overcome the objections raised in the non-final Office Action mailed November 26, 2008. Claims 24-36 are currently pending and wherein Claims 24, 31, 34, and 36 have been amended with respect to the prior art rejections raised in the non-final Office Action.

Applicant's First Argument: Applicant respectfully submits that Gary does not disclose each and every element required by the currently amended Claims 24-29 and 31-36.

Examiner's Response: Applicant's arguments are moot in view of the new grounds of rejection.

Applicant's Second Argument: Greenfield's device is not a resistance exercise clothing article as required by Claims 24-36

Examiner's Response: See Col. 1, lines 36-40 wherein rehabilitation and continual strengthening are interpreted as a type of resistance exercises.

Applicant's Third Argument: Greenfield is a torsional spring, whereas the spring required by Claim 30 is an extension spring.

Examiner's Response: See Col. 1, lines 36-40 wherein it states that the device in combination with the springs provide resistance in the flexure of the joint, i.e. an extension spring and further wherein the coil has a coaxial component and thus is capable of acting as an extension spring as well.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 24-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically Claim 24, the amendment to lines 8-9 is unclear and confusing as to what exactly is trying to be claimed. It appears that the applicant is trying to claim "the plurality or each plurality of elongate material" but again it is unclear. Claims 25-33 are rejected for depending on a reject claim.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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**4. Claims 24, 25, 29-30, and 32-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Greenfield (USPN 5,261,871).**

Regarding Claim 24, Greenfield discloses a resistance exercise (Col. 1, lines 36-40 wherein rehabilitation and continual strengthening are interpreted as a type of resistance exercise) clothing article (20) comprised of clothing material including one or more portions to be worn over one or more joints of a wearer (Fig. 1; 22) and, incorporated onto or into the portion or each of said portions, a plurality of elongate resilient pieces (41) which extend through the portion or each of said portions (Fig. 1), and each of which, when not under external stress, has a particular shape and, when the article is not being worn, maintains substantially that shape against the weight of the clothing material (Col. 6, lines 36-43), and which are arranged parallel to and co-extensively with each other within the article so that, when the article is received over the joint(s) of the body, the or each plurality of elongate resilient pieces extends over the joint(s) and, when the joint(s) bend(s), the clothing material tends to maintain the parallel positioning of the elongate resilient pieces (Fig. 1).

Regarding Claim 25, Greenfield discloses wherein the elongate resilient pieces, when the article is being worn and said joint(s) bend(s), bend to provide most of exercise resistance rather than stretch longitudinally to provide most of exercise resistance (Col. 6, lines 36-43).

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Regarding Claim 29, Greenfield discloses wherein each elongate resilient piece is encapsulated in a pocket (40) at said clothing material (Fig. 1-5).

Regarding Claim 30, Greenfield discloses wherein each elongate resilient piece is a helical extension spring (61; Col. 8, lines 59-62, wherein the coil has a coaxial component and thus is capable of acting as an extension spring as well, and further wherein it states in Col. 1, lines 36-40 that it provides resistance in the flexure of the joint, i.e. an extension spring).

Regarding Claim 32, Greenfield discloses an article in the form of any one of the group consisting of a full body suit with said portions to be worn over at least the wearer's elbow, shoulder, hip and knee joints, a body shirt, with said portions to be worn over the wearer's shoulder joints, thigh-waist, thigh-length shorts, with said portions to be worn over the wearer's hip joints, a sleeve-with said portion to be worn over one of the wearer's elbow joints, a legging, with said portion to be worn over one of the wearer's knee joints, a glove, with said portions to be worn over one set of the wearer's wrist, finger and thumb joints, and a stocking, with said portion to be worn over one of the wearer's knee joints (Col. 5, lines 4-7; Fig. 1, 2, 6 & 7).

Regarding Claim 33, Greenfield discloses wherein said clothing material is lightweight, flexible, stretchable and form-fitting (Col. 5, lines 4-11).

Regarding Claim 34, Greenfield discloses a method for resistance exercising (Col. 1, lines 36-40 wherein rehabilitation and continual strengthening are interpreted as a type of resistance exercise) comprising bending a body joint against bending resistance of a plurality of elongate resilient pieces which extend through a portion of clothing material worn over said joint, the bending resistance providing most of the exercise resistance, said method further comprising, during said bending the elongate resilient pieces substantially parallel to each other (Fig. 1; Col. 6, lines 36-43).

Regarding Claim 35, Greenfield discloses a resistance exercise (Col. 1, lines 36-40 wherein rehabilitation and continual strengthening are interpreted as a type of resistance exercise) clothing article (20) comprised of clothing material including one or more portions to be worn over one or more joints of a wearer (Fig. 1) and, incorporated onto or into said portion(s), one or more elongate resilient pieces (41) which extend(s) through said portion(s) (Fig. 1), each of which, when not under external stress, has a particular shape and, when the article is not being worn, maintains substantially that shape against the weight of the clothing material (Col. 6, lines 36-43), and each elongate resilient piece taking the form of any one of the group consisting of a strip of elastomeric material bonded to the clothing material and of circular segmental cross-section to provide a flat face giving a relatively significant area for bonding, a strip of elastomeric material formed integrally with said clothing material, a helical extension spring, and an elastomeric rod (41; 61; Col. 8, lines 59-62, wherein the coil has a coaxial component and thus is capable of acting as an extension spring as well, and

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further wherein it states in Col. 1, lines 36-40 that it provides resistance in the flexure of the joint, i.e. an extension spring).

Regarding Claim 36, Greenfield discloses wherein the or each elongate resilient piece is one of said helical extension spring (61; Col. 8, lines 59-62, wherein the coil has a coaxial component and thus is capable of acting as an extension spring as well, and further wherein it states in Col. 1, lines 36-40 that it provides resistance in the flexure of the joint, i.e. an extension spring) and said elastomeric rod and is encapsulated in a pocket (40) at said clothing material (Fig. 1-5).

**5. Claims 24-29 and 31-36 rejected under 35 U.S.C. 102(b) as being anticipated by Holt et al. (USPN 5,555,562.**

Regarding Claim 24, Holt et al. disclose a resistance exercise clothing article (10, Abstract) comprised of clothing material including one or more portions to be worn over one or more joints of a wearer (Fig. 1-4) and, incorporated onto or into the portion or each of said portions, a plurality of elongate resilient pieces (80, 82, 84, 86, 92, 93, 94, 95) which extend through the portion or each of said portions (Fig. 1 & 2), and each of which, when not under external stress, has a particular shape and, when the article is not being worn, maintains substantially that shape against the weight of the clothing material (Fig. 5 & 6), and which are arranged parallel to and co-extensively with each other within the article so that, when the article is received over the joint(s) of the body,



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the or each plurality of elongate resilient pieces extends over the joint(s) and, when the joint(s) bend(s), the clothing material tends to maintain the parallel positioning of the elongate resilient pieces (Fig. 1-4).

Regarding Claim 25, Holt et al. disclose wherein the elongate resilient pieces, when the article is being worn and said joint(s) bend(s), bend to provide most of exercise resistance rather than stretch longitudinally to provide most of exercise resistance (Col. 2, lines 66-67).

Regarding Claim 26, Holt et al. disclose wherein each elongate resilient piece takes the form of a strip of elastomeric material (Col. 2, lines 60-62) bonded to the clothing garment (Fig. 5 & 6 wherein the elastomeric materials are bonded to the garment via the pockets that attach them to the garment).

Regarding Claim 27, Holt et al. disclose wherein each strip is of circular segmental cross-section to provide a flat face giving a relatively significant area for bonding (Fig. 5 & 6).

Regarding Claim 28, Holt et al. disclose wherein each elongate resilient piece takes the form of a strip of elastomeric material (Col. 2, lines 60-62) formed integrally with said clothing material (Fig. 5 & 6 wherein when inserted into the pockets the strips become integrally formed with the garment).

Regarding Claim 29, Holt et al. disclose wherein each elongate resilient piece is encapsulated in a pocket (64, 66, 72, 73; Fig. 5 & 6) at said clothing material (Fig. 1 & 2).

Regarding Claim 31, Holt et al. disclose wherein each elongate resilient piece is an elastomeric rod of substantially circular cross-section (Fig. 5 & 6 wherein the rods are shown as substantially circular cross-section).

Regarding Claim 32, Holt et al. disclose an article in the form of any one of the group consisting of a full body suit with said portions to be worn over at least the wearer's elbow, shoulder, hip and knee joints, a body shirt, with said portions to be worn over the wearer's shoulder joints, thigh-waist, thigh-length shorts, with said portions to be worn over the wearer's hip joints, a sleeve-with said portion to be worn over one of the wearer's elbow joints, a legging, with said portion to be worn over one of the wearer's knee joints, a glove, with said portions to be worn over one set of the wearer's wrist, finger and thumb joints, and a stocking, with said portion to be worn over one of the wearer's knee joints (Fig. 1-4).

Regarding Claim 33, Holt et al. disclose wherein said clothing material is lightweight, flexible, stretchable and form-fitting (Col. 4, lines 59-61).

Regarding Claim 34, Holt et al. disclose a method for resistance exercising (Col. 2, lines 66-67) comprising bending a body joint against bending resistance of a plurality of elongate resilient pieces (80, 82, 84, 86, 92, 93, 94, 95) which extend through a portion of clothing material worn over said joint, the plurality of elongate resilient pieces extending over the joint (Fig. 1-4), and the bending resistance providing most of the exercise resistance (Claim 6), said method further comprising, during said bending the elongate resilient pieces substantially parallel to each other (Fig. 1-4).

Regarding Claim 35, Holt et al. disclose a resistance exercise clothing article (10, abstract) comprised of clothing material including one or more portions to be worn over one or more joints of a wearer (Fig. 1-4) and, incorporated onto or into said portion(s), one or more elongate resilient pieces (80, 82, 84, 86, 92, 93, 94, 95) which extend(s) through said portion(s) (Fig. 1 & 2), each of which, when not under external stress, has a particular shape and, when the article is not being worn, maintains substantially that shape against the weight of the clothing material (Fig. 5 & 6), and each elongate resilient piece taking the form of any one of the group consisting of a strip of elastomeric material bonded to the clothing material and of circular segmental cross-section to provide a flat face giving a relatively significant area for bonding, a strip of elastomeric material (Col. 2, lines 60-62) formed integrally with said clothing material (Fig. 5 & 6 wherein when inserted into the pockets the strips become integrally formed with the garment), a helical extension spring, and an elastomeric rod.

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Regarding Claim 36, Holt et al. disclose wherein the or each elongate resilient piece is one of said helical extension spring and said elastomeric rod (Col. 2, lines 60-62) and is encapsulated in a pocket (64, 66, 72, 73) at said clothing material (Fig. 1, 2, 5, & 6).

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMBER R. ANDERSON whose telephone number is (571) 270-5281. The examiner can normally be reached on Mon-Thur, 8am - 6pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/AMBER R ANDERSON/  
Examiner, Art Unit 3765

August 13, 2009

/GARY L. WELCH/  
Supervisory Patent Examiner, Art Unit 3765